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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2018-CP-23-05074

The Clubs at Cherokee Valley Property Owners' Association.....Appellant,

v.

SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's
Pass, LLC; Westchester Ochlockonee, LLC; and RMDC, Inc.....Respondents.

Appellate Case No. 2019-001622

PETITION FOR REHEARING

INDEX:

<u>Description</u>	<u>Page Number</u>
Table of Cases and Authorities	2
Legal Argument/Petition	3
Conclusion	5
Proof of Service	7
Appendix A—Excerpt from Cherokee Valley Covenants, Conditions and Restrictions	9
Appendix B—Email of the Lower Court	10

TABLE OF CASES AND AUTHORITIES:

1. S.C. Code Ann. §15-48-10(b) (2005);
2. S.C. Code Ann. §15-48-200 (2005);
3. *Ex Parte Messer*, 333 S.C. 391, 509 S.E.2d 486 (Ct. App. 1998);
4. *Heffner v. Destiny, Inc.*, 321 SC 536, 537, 471 S.E.2d 135, 136 (1995);
5. *Stonhard, Inc. v. Carolina Flooring Spec., Inc.*, 366 S.C. 156, 621 S.E.2d 352 (2005).

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PETITION FOR REHEARING

TO THE HONORABLE SOUTH CAROLINA COURT OF APPEALS:

Appellant, the Clubs of Cherokee Valley Property Owners Association (the "Association") respectfully petitions the Court to rehear this appeal, pursuant to Rule 221 SCACR. Specifically, the Association requests that the Court reconsider its decision, which was filed on October 16, 2019, dismissing this appeal on grounds that it raises claims not appealable under S.C. Code Ann. §15-48-200 (2005), and the Association further requests that its appeal be determined on the merits. Appellant submits that the Court has overlooked or misapprehended the following primary points:

1) The appealed claims are not within the ambit of the South Carolina Uniform Arbitration Act (the “Act”); therefore, the Association’s right to appeal cannot be precluded by Section 15-48-200 of the Act. Specifically, S.C. Code Ann. § 15-48-10(b) provides that the Act does not apply to “(1) Any agreement or provision to arbitrate in which it is stipulated that this Chapter shall not apply....” The matters Appellant seeks to exclude from arbitration are expressly exempted from arbitration by the plain language contained in that certain Declaration of Covenants, Conditions and Restrictions for Cherokee Valley Phase IV the Summit Section 1 and 2 dated June 5, 2006 and recorded in the Office of the Register of Deeds for Greenville County in Deed Book 2210 at Page 287 (the “Covenants”). An excerpt from the Covenants is attached hereto as **Appendix A**, to emphasize the stark and unequivocal exemption of suits to enforce collection of Association common expenses assessments under the Covenants. Appellant seeks to exempt its assessment lien foreclosure action from arbitration. Indeed, the lower Court, in communicating its conclusion to the parties, concedes the clarity of this exemption. See email of The Honorable Judge Robin Stilwell attached as **Appendix B** hereto stating,

“Counsel:

I have read your respective orders. I agree that those claims that are exempt under 13.2 are exempted from arbitration....”

Yet, the lower court decreed that the exempt claims be subject to binding arbitration on its own views of economy, essentially writing a contract for the parties unsupported by consideration and contradicting the will and interests of Appellant and its constituent members. Matters falling outside the Act are not subject to appellate prohibitions of the Act. See *Ex Parte Messer*, 333 S.C. 391, 509 S.E.2d 486 (Ct. App. 1998).

2) Appellant's assessment collections and foreclosure actions are plainly exempt from arbitration, and there is no other or independent basis for the Court to compel arbitration. Appellant accepts the general wisdom of alternative dispute resolution: that such processes generally present efficiencies and guard the economic interests of the public by avoiding waste of precious judicial resources. Heffner v. Destiny, Inc., 321 SC 536, 537, 471 S.E.2d 135, 136 (1995). For the same reasons that the Supreme Court's standing Order on mandatory alternative dispute resolution contains exceptions, the Cherokee Valley Covenants have likewise excluded from arbitration actions for collection of assessments. Such actions on assessments are lien actions and require the specialized support and process, ultimately to manage public sale of private assets. Foreclosure is exempt from mandatory alternative dispute resolution, and unsurprisingly, assessment lien foreclosure is exempt from arbitration under the Covenants and thus the Act. It does not aid efficiency or economy to submit to arbitration matters that are beyond the power of an arbitrator to administer. Moreover, the lower Court's Order would detrimentally shift dispute cost allocations. In assessment actions, the cost of recovery is taxed to the assessment obligor; but here, the lower court has ordered that arbitration costs be split. In sum, the lower court's basis for transferring a foreclosure action to arbitration fails to serve efficiency and economy and is entirely without any legal basis. *See e.g. Stonhard, Inc. v. Carolina Flooring Spec., Inc.*, 366 S.C. 156, 621 S.E.2d 352 (2005) (holding that it is beyond the authority of the court to craft contract terms inconsistent with original intentions of the parties).

CONCLUSION: Appellant does not resist the bulk of the lower Court's directive to the Parties that claims for Covenant compliance and adherence to construction standards be transferred to arbitration, but as for Appellant's action for foreclosure of its assessment lien and

injunctive relief claims which are contractually exempt from Arbitration and thus from the appeal constraints of the South Carolina Uniform Arbitration Act, Appellant requests this Court reconsider its decision.

FOX ROTHSCHILD, LLP

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PROOF OF SERVICE

The undersigned employee of the law offices of Fox Rothschild LLP, attorneys for Appellant, does hereby certify that service of Appellant's *Petition for Rehearing* was made on all counsel of record, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

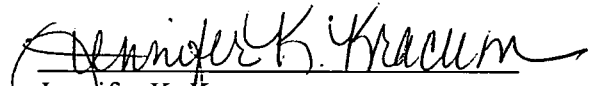
Gregory A. Morton, Esq.
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John T. Crawford Jr., Esq.
Mark A. Bible Jr., Esq.
Kenison, Dudley & Crawford, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601

[signature block on following page]

RECEIVED
OCT 25 2019
SC Court of Appeals

This the 24th day of October, 2019.


Jennifer K. Kracum

APPENDIX A



2006055356

REST
68 PGS
Page: 287-354

June 12, 2006 11:10:29 AM
Rec: \$74.00 City Tax: \$0.00 State Tax: \$0.00

FILED IN GREENVILLE COUNTY, SC

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE
SOUTH CAROLINA UNIFORM ARBITRATION ACT, 15-48-10, S.C. CODE OF LAWS OF 1976,
AS AMENDED.



COPY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CHEROKEE VALLEY

PHASE IV

THE SUMMIT

SECTION I

SECTION II

the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

10.5. Personal Property and Real Property for Common Use. The Board of Directors may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting there from the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot and Dwelling.

10.6. Rules and Regulations. As provided in ARTICLE 12 hereof, the Board of Directors may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Declaration.

10.7. Reduction in Services. During the calendar years of 2006 and 2007, and during the first two years when any additional property may be added to this Declaration, the Board of Directors will define and list a minimum level of services that will be furnished by the Association. So long as the Declarant is engaged in the development of properties which are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefore.

10.8. Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 10.7 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 10.7 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

ARTICLE 11

ASSESSMENTS

11.1. Purpose of Assessments. The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

11.2. Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, such Assessments to be established and

collected as provided in Section 11.3, (b) Special Assessments, such Assessments to be established and collected as provided in Section 11.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 11.7 and (d) Individual or Specific Assessments pursuant to Section 11.8. Any such Assessments payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 11.3(d), provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage or Mortgage of Declarant, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

11.3. Establishment of Annual Assessment. The Declarant has prepared the initial budget of the Association and copy is available to any owner upon written request. It will be the duty of the Board of Directors at least sixty (60) days prior to the first day of the Association's first full fiscal year, and each fiscal year thereafter, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. The Board will cause the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. Each Lot and Dwelling shall be equally responsible for its proportionate share of the total Annual Assessments.

(a) Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved (a) solely by the Declarant in writing during the Declarant Control Period, and (b) thereafter by seventy-five percent (75%) or more of the votes of the entire Association at a special meeting of Members called therefore and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 11.4.

(b) Special Board Action to Increase. If the Board of Directors determines that the important and essential functions of the Association will not be properly funded in any year by the Annual Assessment herein provided, it may increase such Assessment; provided, however, an increase in Annual Assessments in any year pursuant to special Board action as aforesaid will in no way affect Annual Assessments for subsequent years.

opposing the Special Assessment (Directors being under no obligation to provide such statements). Neither statement, either supporting or opposing the Special Assessment, will exceed five pages in length.

(b) Apportionment. Special Assessments will be apportioned equally among the Lots and Dwellings in the same manner as Annual Assessments.

11.7 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 11.3 and the Special Assessment authorized by Section 11.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant during the Declarant Control Period, and/or by the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned equally among the Lots and Dwellings in the same manner as Annual Assessments unless it is determined by the Declarant and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

11.8 Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant will be exempt from the payment of Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved Lots and unoccupied Dwellings owned by the Declarant and subject to this Declaration. The Declarant hereby covenants and agrees, however, that during the Declarant Control Period it will annually elect either to pay an amount equal to the Annual Assessment for each such Lot and Dwelling owned by it or to pay the difference between the amount of Assessments collected on all other Lots and Dwellings not owned by Declarant and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than the Annual Assessments Declarant would pay if not exempt therefrom. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant will be deemed to have elected to continue paying on the same basis as existed during the immediately preceding year. Furthermore, so long as the Declarant owns any Lot or Dwelling for sale, the Declarant may, but will not be obligated to, reduce the Annual Assessment for any year to be paid by Owners. The Declarant will fund any such reduction in the amount assessed against the Owner as a subsidy. Any such subsidy will, in the Declarant's sole discretion, be (a) a contribution to the Association, (b) an advance against future Annual Assessments due from said Declarant, or (c) a loan to the Association. The amount and character (contribution, advance or loan) of such payment by the Declarant will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Any such subsidy payment by Declarant may be made in-kind.

11.9 Individual Specific Assessments. Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or Occupants, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with ARTICLE 12 hereof will be specially assessed as a specific Assessment against each such Owner and the Owner's Lot or Dwelling.

11.10 Effect of Nonpayment; Remedies of the Association. An Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefore by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire

unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens for unpaid taxes, any Institutional Mortgage and any Mortgage held by Declarant as provided in Section 11.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute suite to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

11.11 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association will, within ten (10) days of a written request and upon payment of a fee set from time to time by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate will be conclusive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

11.12 Date of Commencement of Assessments. The Assessments provided for herein will commence on the date on which a Lot is conveyed to a person other than Declarant and will be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments, Special Assessments, and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such property is first conveyed.

(a) Working Capital Collected At Initial Closing. Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Lot from the Declarant a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Lot by the Declarant to any other Owner. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Declaration and the Bylaws.

ARTICLE 12

RULE MAKING

12.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas, and facilities located thereon. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations, which will govern activities that may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. The Association will furnish copies of such rules and regulations and amendments thereto to all Owners prior to the effective date

(iv) The proposed sanction to be imposed.

(c) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if the officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and matter of delivery. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE 13

ALTERNATIVE DISPUTE RESOLUTION & LITIGATION

13.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any Persons not otherwise subject to the Declaration who agrees to submit to this ARTICLE 13 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration or the Development including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 13.2, are subject to the procedures set forth in Section 13.3.

13.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 13.3:

(a) any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 13.3 below; or

(c) any suit between Owners which does not include the Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration and the Development; or

(d) any suit in which an indispensable party is not a Bound Party; or

(e) any suit which otherwise would be barred by any applicable statute of limitation; or

(f) any suit involving a matter that is not an Exempt Claim under (a) through (e) above; but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 13.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3 below, but there is no obligation to do so.

13.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Declaration or the Development, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section 13.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit "C" to this Declaration, and then only to enforce the results hereof.

13.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 13.3 above, with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this ARTICLE 13 and the procedures therefore set forth in Exhibit "C" to this Declaration, if applicable.

13.5 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this ARTICLE 13 and the procedures set forth in Exhibit "C" and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit "C" will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this ARTICLE 13 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE 14

MORTGAGEE PROTECTION

14.1 Introduction. This ARTICLE 14 establishes certain standards and covenants that are for the benefit of the holders, insurers and guarantors of certain mortgages. This ARTICLE 14 is supplemental to, and not in substitution for, any other provisions of the Declaration, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Article from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgage approval requirements.

14.2 Eligible Mortgagees. Wherever in the Constituent Documents the approval or consent of a specified percentage of "Eligible Mortgagees" is required, it shall mean the approval or consent of the Institutional Mortgagees holding first lien Mortgages on Lots which have provided to the Association written requests, stating their names and addresses and the street addresses of the Lots to which their Mortgages relate, to receive written notice of the matters for which they are entitled to vote, and which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Lots then subject to first Mortgages held by Eligible Mortgagees.

APPENDIX B

Counsel:

I have read you respective orders. I agree that those claims that are exempt under 13.2 are exempted from arbitration. For instance, suits to obtain a Temporary Restraining Order are specifically exempted; suits on *Injunction Relief* are not. There is a very practical distinction. Ill revise the order accordingly.

Robin B. Stilwell
Circuit Judge, State of South Carolina
305 East North Street, Suite 315
Greenville, SC 29601
(864) 467-8408

From: Mark Bible <bible@conlaw.com>
Sent: Wednesday, August 21, 2019 10:24 AM
To: Stilwell, Robin B. Law Clerk (Kamairi Fayall) <rstilwellc@sccourts.org>; Rohe, Joseph <JRohe@foxrothschild.com>; gmorton@dmdslaw.com; Swent, William B. <WSwent@foxrothschild.com>
Cc: Stilwell, Robin B. Secretary (Carole Ring) <rstilwellsc@sccourts.org>; Stilwell, Robin B. <rstilwellj@sccourts.org>; John Crawford <crawford@conlaw.com>
Subject: RE: 2018CP2305047 Clubs at Cherokee Valley Property Owners Association vs SK Builder

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Mr. Touma,

We apologize for the delay in providing the Court with a proposed order on this matter. The parties are unable to agree on certain terms and are hereby providing two versions of the proposed order for the Courts consideration and decision. The Defendants proposed order (attached) is the original version that I prepared and request be approved by the Court. The Plaintiffs proposed order (attached in word and red-line PDF) is the version the Plaintiffs counsel would like to be approved by the Court. Please provide these documents to Judge Stilwell for review and decision. Should Judge Stilwell like to hold a teleconference or a hearing for the parties to voice their respective position(s) as to the differences of each order, the parties are happy to accommodate. Opposing counsel and I have discussed this matter and I have included counsel of record in this e-mail. Please let us know if the Court needs anything further. Thank you.

Sincerely,

Mark A. Bible Jr.

Attorney

bible@conlaw.com

cid:image001.jpg@01D55DA6.4072B030

704 E. McBee Avenue / Greenville , SC 29601

Ph: 864.242.4899 / Fax: 864.242.4844

From: Stilwell, Robin B. Law Clerk (Adam Touma) <rstilwellc@sccourts.org>
Sent: Tuesday, July 30, 2019 3:31 PM
To: Stilwell, Robin B. <rstilwellj@sccourts.org>; Mark Bible <bible@conlaw.com>; Rohe, Joseph <JRohe@foxrothschild.com>; gmorton@dmdslaw.com; John Crawford <crawford@conlaw.com>
Cc: Stilwell, Robin B. Secretary (Carole Ring) <rstilwellsc@sccourts.org>
Subject: 2018CP2305047 Clubs at Cherokee Valley Property Owners Association vs SK Builder

Good Afternoon All,

I have spoken with Judge Stilwell regarding this case. Mr. Bible, would you please compose an Order granting Arbitration and email it to us in word format? Thank you.

Sincerely,

Adam G. Touma
Law Clerk to the Honorable Robin B. Stilwell
13th Judicial Circuit
Greenville: (864)-467-8407
Rstilwellc@sccourts.org

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



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October 24, 2019

**RECEIVED**  
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SC Court of Appeals

**VIA FEDEX**

Honorable Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: The Clubs at Cherokee Valley Property Owners' Association - Appellants  
vs. SK Builders, Inc.; Devoro Homes, LLC; Westchester Jordan's Pass, LLC;  
Westchester Ochlochkonee, LLC and RMDC, Inc. – Respondents  
Appellate Case No. 2019-001622

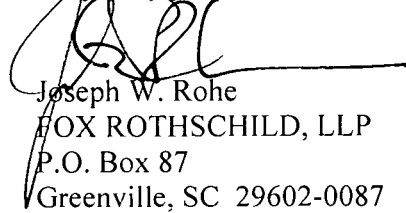
Dear Ms. Kitchings:

Enclosed for filing is an original and six copies of a Petition for Rehearing, Memorandum in Support and Proof of Service in the above case. Also enclosed is our Firm check in the amount of \$50.00 to cover the filing fee.

By copy of this letter, copies of the enclosed are being forwarded to counsel for the Respondents.

Please return a time-stamped copy of this filing to me in the envelope provided. Thank you for your assistance.

Very truly yours,



Joseph W. Rohe  
FOX ROTHSCHILD, LLP  
P.O. Box 87  
Greenville, SC 29602-0087  
(864-751-7600)  
Attorneys for Appellant

Enclosures

cc w/enc.: Gregory A. Morton, Esq., Attorney for SK Builders, Inc.  
John T. Crawford, Esq. / Mark A. Bible, Jr., Esq.  
Attorneys for Respondents Devoro, Westchester and RMDC

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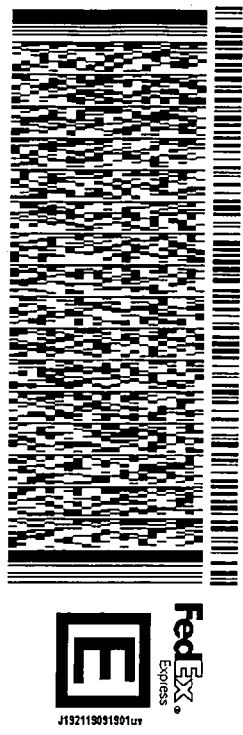
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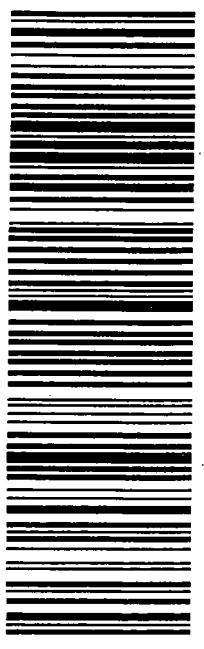
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**SC Court of Appeals**

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3. Keep the second page as a receipt for your records. The receipt contains the terms and conditions of shipping and information useful for tracking your package.

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